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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:

St. Joe Minerals Corp. - Viburnum Site
Iron County, Missouri

THE DOE RUN RESOURCES CORPORATION,

Respondent.

Docket No. CERCLA-07-2005-0339

ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL PRELIMINARY
ASSESSMENT/SITE INSPECTION

Proceeding under Sections 104, 106(a), 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and
9622.

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SUPERFUND RECORDS

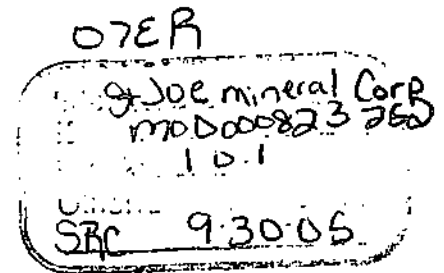


TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	2
II.	PARTIES BOUND	2
III.	DEFINITIONS	2
IV.	FINDINGS OF FACT	5
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	6
VI.	ORDER	7
VII.	DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS	7
VIII.	WORK TO BE PERFORMED	8
IX.	SITE ACCESS	12
X.	ACCESS TO INFORMATION	13
XI.	RECORD RETENTION	14
XII.	COMPLIANCE WITH OTHER LAWS	14
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	15
XIV.	AUTHORITY OF EPA'S PROJECT COORDINATOR	15
XV.	PAYMENT OF RESPONSE COSTS	16
XVI.	DISPUTE RESOLUTION	17
XVII.	FORCE MAJEURE	18
XVIII.	STIPULATED PENALTIES	19
XIX.	COVENANT NOT TO SUE BY EPA	21
XX.	RESERVATIONS OF RIGHTS BY EPA	21
XXI.	COVENANT NOT TO SUE BY RESPONDENT	22
XXII.	OTHER CLAIMS	23
XXIII.	CONTRIBUTION PROTECTION	23
XXIV.	INDEMNIFICATION	24
XXV.	INSURANCE	24
XXVI.	MODIFICATIONS	25
XXVII.	ADDITIONAL WORK	25
XXVIII.	NOTICE OF COMPLETION OF WORK	26
XXIX.	SEVERABILITY/INTEGRATION/APPENDICES	26
XXX.	EFFECTIVE DATE	26

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and The Doe Run Resources Corporation ("Respondent"). This Order provides for the performance of a removal preliminary assessment and site inspection and associated sampling activities by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the St. Joe Minerals Corp. - Viburnum Site (the "Site") located in Iron County, Missouri.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. The EPA has notified the state of Missouri (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. The EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Order as provided in Section XXX.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "MDNR" shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the state.

g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

h. "Order" shall mean this Administrative Order on Consent and all appendices hereto. In the event of conflict between this Order and any attachment, this Order shall control.

i. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA in connection with this Order, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs; contractor costs; interagency agreement costs; compliance monitoring, including the collection and analysis of split samples, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of performing any of Respondent's tasks; costs incurred by EPA in the process of assisting Respondent to gain access as described in Section IX (Site Access); other costs incurred in implementing, overseeing, or enforcing this Order; and enforcement costs.

j. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondent.

l. "Preliminary Assessment/Site Inspection" or "PA/SI" shall mean an assessment, inspection, and reporting of available information regarding hazardous substances, pollutants or contaminants at the Site to support, if necessary, the drafting of a removal site evaluation as described by 40 C.F.R. § 300.410 and the selection and implementation of a removal action to abate, if present, threats to human health or the environment presented by mining related contamination within the Site.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Respondent" shall mean The Doe Run Resources Corporation.

o. "Section" shall mean a portion of this Order identified by a Roman numeral.

p. "Site" means any residence or child high use area (1) within the City of Viburnum, adjacent to the City of Viburnum or within the cross-hatched area on the map attached as Appendix A to this Order; (2) adjacent to and within 200 feet of either edge of the haul roads from the City of Viburnum to the Viburnum No. 27, No. 29, and Casteel mines; (3) within 1000 feet of the head frames of Viburnum No. 27, No. 29 and Casteel mines; and (4) within the area within 1000 feet from the edge of all Doe Run and St. Joe Minerals-Viburnum mine waste disposal areas (e.g. tailings piles). The areas are denoted by the shaded areas or cross-hatched area on the map attached as Appendix A. Should this written definition conflict with the Appendix A then Appendix A shall prevail.

q. "State" shall mean the state of Missouri.

r. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Preliminary Assessment/Site Investigation, as set forth in Appendix B to this Order, and any modifications made thereto in accordance with this Order.

s. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

t. "Work" shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

8. The Site is located in Iron County, in the southeastern region of Missouri. It is part of what is commonly known as the New Lead Belt, which began producing lead around 1960 and continues production to this day.

9. The Doe Run Company - Viburnum Division (formerly St. Joe Minerals Corp - Viburnum) is located in and near the city of Viburnum, Missouri, at the northern end of the Viburnum Trend Lead Mining District. The Viburnum Division includes four mines where ore was brought to the surface: Viburnum Mine 27 in Crawford County; Viburnum Mine 29 in Washington County; Viburnum Mine 28 in Iron County; and Casteel Mine in Iron County. The mined ore was previously transported over privately owned haul roads to the Viburnum Central Mill which was located at Viburnum Mine 28 in Iron County and is currently inactive. From the Viburnum Central Mill, the processed lead, called lead concentrate, was hauled to various smelters or shipped overseas. Currently, only Viburnum Mine 29 and the Casteel Mine are operating. Viburnum Mine 27 was closed in 1983 and Viburnum Mine 28 was closed in 2004. Ore from the Viburnum Mine 29 is currently brought to the Viburnum Central mill complex where it is crushed and then hauled over public roads to the Buick mill for concentrating. The lead ore from the Casteel mine is also hauled over public roadways to other mine ore concentrators within the Viburnum Trend Mining District for further processing.

10. From October 2002 to October 2003, the Missouri Department of Natural Resources (MDNR) conducted a large scale removal site evaluation along 12 previously identified haul route segments in Iron, Reynolds, and Dent Counties, Missouri. During this evaluation homes were identified where lead concentrations in the yards were as high as 6,534 ppm with cadmium levels as high as 8.19 ppm and zinc as high as 3,570 ppm.

11. Hauling and other mining related activities occurred in and around the city of Viburnum, Missouri. As a result of these mining related activities there is a threat that hazardous substances, pollutants and/or contaminants have been released into the environment in quantities sufficient to present an imminent and substantial danger to public health and welfare.

12. Respondent is a corporate successor of St. Joe Minerals Corporation, who conducted mining operations in the vicinity of the Site.

13. Respondent is a New York Corporation registered to do business in the state of Missouri.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

14. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. Lead has been found at the Site and is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because:
 - i. Respondent is the "owner" and/or "operator" of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1);
 - ii. Respondent was the "owner" and/or "operator" of the Site at the time of disposal of hazardous substances, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2); and/or
 - iii. Respondents arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- e. The presence of hazardous substances at the Site or the past, present, or potential migration of hazardous substances currently located at, or emanating from, the Site constitutes an actual or threatened "release" of hazardous substances from a facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The response activities required by this Order are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

15. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the St. Joe Minerals Corp. - Viburnum Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS

16. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within ten (10) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least ten (10) days prior to commencement of such Work. The EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within fifteen (15) days of EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

17. Within ten (10) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present at, or readily available by telephone during, on-site work. The EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

18. The EPA has designated Jeffrey Weatherford, P.E., as its Project Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order by certified or registered mail to Mr. Weatherford at the United States Environmental Protection Agency, Region VII, 97 North Outer Road, Eureka, Missouri, 63025, telephone (636) 587-2215.

19. The EPA and Respondent shall have the right, subject to paragraphs 16 and 17, to change their respective designated Project Coordinators and contractors. Verbal notice of such change shall be provided to the other party within twenty-four (24) hours of such change and written notice shall follow within five (5) days of such change. Such change by Respondent is subject to EPA approval as set forth in Paragraphs 16 and 17 above.

VIII. WORK TO BE PERFORMED

20. Respondent shall perform, at a minimum, all actions necessary to implement the removal preliminary assessment and site inspection and associated sampling activities for the Site in accordance with this Order and the attached Statement of Work (SOW), Appendix A. The actions to be implemented generally include, but are not limited to, the following:

21. Work Plan and Implementation.

a. Within thirty (30) days after the Effective Date, Respondent shall submit to EPA for approval, a draft Work Plan for performing the preliminary assessment/site investigation (PA/SI) generally described in this Order and the attached SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order. The draft Work Plan shall include a Sampling and Analysis Plan that shall consist of a Field Sampling Plan ("FSP") and a Quality Assurance Project Plan ("QAPP"), as described in the Statement of Work and guidances, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-02/009, December 2002 or subsequently issued guidance), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001 or subsequently issued guidance).

b. The EPA may approve, disapprove, require revisions to, or modify the draft Work Plan pursuant to the review and approval procedures established by this Order.

c. Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval. Upon receipt of EPA approval the Respondent shall implement the approved Work Plan.

d. Respondent shall notify EPA at least seven (7) days prior to performing any on-site Work pursuant to the Work Plan approved by EPA.

22. **Health and Safety Plan.** Within thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment, a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that

it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

23. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. The EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have the laboratory that it selects analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. The EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA, within twenty (20) days of receipt by Respondent of final validated sampling results from the laboratory, all analytical data collected in connection with this Order.

24. Preliminary Assessment/Site Inspection Report.

a. Respondent shall within ninety (90) days of the completion of sampling activities conducted pursuant to this Order prepare and submit for EPA review and approval a Preliminary Assessment/Site Inspection Report ("PA/SI Report") that substantially conforms with the information requirements to draft a removal site evaluation pursuant to 40 C.F.R. § 300.410,

the SOW and any applicable EPA guidance. The PA/SI Report shall incorporate and evaluate all data generated using proper data quality procedures.

b. After reviewing the PA/SI Report, EPA will determine the appropriate extent of time-critical removal action to be taken in response to the release. Based upon the PA/SI and the current Site conditions, EPA will determine if a time-critical removal action is appropriate. The EPA will issue, if necessary, a decision document that determines the type of removal action necessary to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health, welfare, or the environment posed by the release at or from the Site. The EPA's determination that a time-critical removal action is necessary shall not be subject to dispute resolution nor give rise to any right to judicial review except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

c. The PA/SI Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

25. Review and Approval.

a. The following procedure will apply to all documents submitted to EPA for review and approval pursuant to the requirements of this Order. The EPA will notify Respondent in writing whether it approves or disapproves of the document that is subject to review and approval and provide comments regarding the basis for any disapproval. Within twenty (20) days of receipt of written notice of disapproval from the EPA, or such other time period as agreed to by Respondent and EPA, Respondent shall make the necessary revisions and resubmit the document to EPA. Subject to dispute resolution, EPA will make the final determination as to whether the document submitted by Respondent is in compliance with the requirements of this Order.

b. Failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period(s) or the absence of comments shall not constitute approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

c. If a document that is resubmitted after EPA disapproval continues to have a material defect, it shall be considered a violation of the Order and EPA retains the right to seek stipulated or statutory penalties, perform its own studies, complete the Work (or any portion of the Work) under CERCLA and the NCP, and to seek reimbursement from the Respondent for its costs and/or seek any other appropriate relief.

d. Approved documents shall be deemed incorporated into and made part of this Order. Prior to written approval, no work plan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

26. Reporting.

a. Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order. The first report shall be due thirty (30) days after the Effective Date and subsequent reports shall be due monthly until termination of this Order, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered; analytical data received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of actions to be performed, *anticipated problems, and planned resolutions of past or anticipated problems.*

b. Respondent shall submit two (2) copies of all plans, reports, or other submissions required by this Order, the attached SOW, or any approved Work Plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee.

27. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the planning for, and conduct of, the PA/SI, as is necessary in order to provide the community with information and opportunity for input.

IX. SITE ACCESS

28. If any property within the Viburnum Site where access is needed to implement this Order is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the property for the purpose of conducting any activity related to this Order.

29. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements. "Best efforts" means Respondent shall send a letter, which has been reviewed and approved by EPA, to the owner of the property to which access is sought that describes the process and purpose of the removal action, the reasons access is needed, and includes a telephone contact number; and it means Respondent shall make an initial visit to each property to which access is sought and conduct at least two follow-up visits if necessary in order to secure access. The follow-up visits shall be conducted during weekday evening hours between 6:00 p.m. and 8:00 p.m. Respondent shall maintain a log in which it records its efforts to obtain access, including the date the letter was mailed, the time and dates of the initial and follow-up visits, and either the date of the response by the landowner or the date EPA was notified of the failure of Respondent to obtain a response from the property owner. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain an access agreement. If Respondent fails to secure necessary access agreements, EPA may assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate, including exercising its authority pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Each access agreement shall permit Respondent and EPA, including its authorized representatives and representatives of the State and Iron County, access to the property to conduct the activities required under this Order. These individuals shall be permitted to enter and move freely at the property in order to conduct actions that EPA determines to be necessary. Such unrestricted access shall continue until such time as EPA has granted notice of completion as set forth in Section XXVIII (Notice of Completion) of this Order. Nothing herein shall be interpreted as limiting or affecting EPA's statutory right of entry or inspection authority under federal or state law. All costs and attorney's fees incurred by the United States in obtaining access shall be considered Oversight Costs.

30. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

31. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or in the possession or control of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work available to EPA for purposes of investigation, information gathering, or testimony.

32. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

33. Respondent may assert that certain documents, records and other information provided under this Section are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

34. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

35. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to performance of the Work.

36. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

37. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

38. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan

subject to EPA approval. The Work Plan shall also describe for each identified ARAR, the measures to be taken to ensure compliance with the ARAR.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

39. In the event of any action or occurrence during performance of the Work which causes or threatens a release of waste material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response and Removal Branch, EPA Region VII, (913) 281-0991, of the incident or on-Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

40. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify EPA's Project Coordinator at (636) 587-2215 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. *This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.*

XIV. AUTHORITY OF EPA'S PROJECT COORDINATOR

41. The EPA's Project Coordinator shall be responsible for overseeing Respondent's implementation of this Order. The EPA's Project Coordinator shall have the authority vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of EPA's Project Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by EPA's Project Coordinator.

XV. PAYMENT OF RESPONSE COSTS

42. Payments for Oversight Costs.

a. Respondent shall pay EPA all Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment, including an Itemized Cost Summary (SCORPIOS Report). Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Section XVI (Dispute Resolution) of this Order.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check made payable to "St. Joe Minerals Corp. – Viburnum Special Account, EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, EPA Site/Spill ID number 07ER and the docket number of this Order. Respondent shall send the check(s) to:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 371099M
Pittsburgh, PA 15251

c. At the time of payment, Respondent shall send a copy of the check, as well as any transmittal letter to Jeffrey Weatherford, EPA Region VII, 97 North Outer Road, Eureka, Missouri 63025.

d. The total amount to be paid by Respondent pursuant to Paragraph 42(a) shall be deposited in the St. Joe Minerals Corp. – Viburnum Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

43. In the event that the payment for Oversight Costs is not made within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Oversight Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

44. Respondent may dispute all or part of a bill for Oversight Costs submitted under this Order if Respondent alleges that EPA has made an accounting error or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 42 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 42 above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

45. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

46. If Respondent objects to any EPA action taken pursuant to this Order Respondent shall notify EPA in writing of its objection(s) within twenty (20) days of such action, unless the objection(s) has/have been informally resolved.

47. Such notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted as consistent with the requirements of this Order, the factual and legal basis for Respondent's position, and all matters Respondent consider necessary for the EPA's determination. The EPA and Respondent shall then have fourteen (14) working days from EPA's receipt of Respondent's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by each party, and incorporated into this Order. If the parties are unable to reach agreement within this fourteen (14) working day period, the matter shall be referred to the Regional Judicial Officer. The EPA shall provide notice in writing of its position, including the position EPA maintains should be adopted as consistent with the requirements of this Order, the factual and legal basis for EPA's position, and all matters EPA considers necessary for the Regional Judicial Officer's determination. Respondent may reply to EPA's notice of its position. The EPA may, but shall not be required to, give notice, as described above, if it has already provided written notice, if it has already provided written reasons, or already provided a written explanation pursuant to a notice of disapproval of a plan, report or other item.

48. The Regional Judicial Officer shall then decide the matter, consistent with the NCP and the terms of this Order, on the basis of those written materials described in this Section, and any meeting held with Respondent and EPA. The Regional Judicial Officer will then provide a written statement of his/her decision to both parties to the dispute, which shall be incorporated into this Order, provided that incorporation of the Judicial Officer's decision into the Order shall not deprive Respondent of the right to contest the validity of the Regional Judicial Officer's

decision in any judicial action taken by the EPA to enforce this Order, or the terms thereof, as provided by Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

49. All materials submitted pursuant to this Section, shall be kept as part of any Administrative Record made pursuant to 40 C.F.R. §§ 300.415 and 300.820 for any response action resulting for this Site.

50. Notwithstanding any other provisions of this Order, no action or decision by EPA, including without limitation, decisions of the Regional Judicial Officer pursuant to this Order, shall constitute final EPA action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with the requirements of this Order.

XVII. FORCE MAJEURE

51. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall immediately notify EPA orally when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

53. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is

attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

54. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 56 and 57 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Order or any Work Plan or other plan approved under this Order identified below in a manner acceptable to EPA and in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order. The EPA shall take Respondent's good faith efforts to comply with the requirements of this Order into consideration when making a determination to seek stipulated penalties

55. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 55.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 2,000	15th through 30th day
\$ 3,000	31st day and beyond

b. Compliance Milestones:

- (1) Failure to submit the Work Plan in a timely or adequate manner.
- (2) Failure to submit Health and Safety Plan in a timely or adequate manner.
- (3) Failure to follow quality assurance and sampling guidance and procedures.
- (4) Failure to timely submit the QAPP in a timely or adequate manner.
- (5) Failure to timely submit Final PA/SI Report.
- (6) Failure to meet deadlines established by the Work Plan.

56. Stipulated Penalty Amounts - Other Deliverables or Violations.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 56.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1,000	15th through 30th day
\$ 2,000	31st day and beyond

b. Compliance Milestones:

(1) Any other violation of this Order, other than those milestones identified in Paragraph 55.b.

57. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

58. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. The EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in this Section regardless of whether EPA has notified Respondent of a violation.

59. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, Attn: Superfund Accounting, EPA Region VII (Comptroller Branch), P.O. Box 371099M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 07ER, the EPA Docket Number which appears on the face of this Order, and the name and address of the party making payment. Copies of the check paid pursuant to this Section, and any accompanying transmittal letter, shall be sent to EPA as provided in Paragraph 42.

60. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

61. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's

decision. The Regional Judicial Officer shall have the discretion to reduce any amount of stipulated penalties, initially demanded by EPA, as indicated in his/her decision.

62. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 59. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(f) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(f), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(f) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

63. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Oversight Costs. This covenant not to sue shall take effect upon receipt by EPA of the Oversight Costs due under Section XV of this Order and any Interest or Stipulated Penalties due for failure to pay Oversight Costs as required by Sections XV and XVIII of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of their obligations under this Order, including, but not limited to, payment of Oversight Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

64. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

65. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. The EPA reserves and this Order is without prejudice to all rights against Respondent with respect to all other matters, including, but not limited to:

- a. Claims based on a failure by Respondent to meet a requirement of this Order;
- b. Liability for costs not included within the definition of Oversight Costs;
- c. Liability for performance of response action other than the Work;
- d. Criminal liability;
- e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. Liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

66. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

67. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Oversight Costs, or this Order, including, but not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 70 (Waiver of Claims) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 65(b), (c), and (e) - (g), but only to the extent that Respondent's claim arises from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

68. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

69. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

70. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of, or release from, any claim or cause of action against Respondent, or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

71. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

72. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Oversight Costs paid by Respondent. Nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or

demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

73. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

74. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

75. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

76. At least seven (7) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and, if requested, a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor

maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. MODIFICATIONS

77. The EPA Project Coordinator may make modifications to any plan, schedule, or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

78. If Respondent seeks permission to deviate from any approved work plan, schedule, or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the Project Coordinator pursuant to Paragraph 79.

79. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVII. ADDITIONAL WORK

80. If EPA determines that additional work not included in an approved plan is necessary to satisfy the scope and substance of this Order, EPA will notify Respondent of that determination. The scope and substance of the Removal Action to be performed by Respondent is set forth in Section VIII of this Order and the SOW incorporated herein as Appendix A to this Consent Order. Respondent shall confirm its willingness to perform the additional work in writing to EPA within thirty (30) days of receipt of the EPA notice or Respondent shall invoke the dispute resolution provisions of Section XVI of this Order. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. Unless otherwise stated by EPA, or unless Respondent invokes dispute resolution, within thirty (30) days of receipt of notice from EPA that additional work is necessary, Respondent shall submit for approval by EPA a work plan for the additional work. This work plan shall conform to the applicable requirements of Section VIII (Work to be Performed) of this Order. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional work in accordance with the provisions and schedules contained therein.

XXVIII. NOTICE OF COMPLETION OF WORK

81. When EPA determines, after EPA's review of the Final PA/SI Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order (e.g. record retention, etc.), EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

82. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

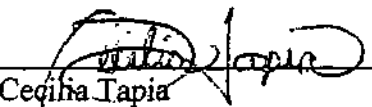
83. This Order and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

XXX. EFFECTIVE DATE


84. This Order shall become effective upon receipt by Respondent of a fully executed copy of this Order, as shown by the date on the certified mail receipt.

In the Matter of St. Joe Minerals Corp. - Viburnum Site, Iron County, Missouri

IT IS SO ORDERED.


Cecilia Tapia
Director
Superfund Division
Region VII
U.S. Environmental Protection Agency


DATE: 9/30/05


J. Daniel Breedlove
Assistant Regional Counsel
Region VII
U.S. Environmental Protection Agency

DATE: 9/30/2005

The representative of Respondent who has signed this signature page certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

For THE DOE RUN RESOURCES CORPORATION


Louis Maruchau
Vice President Law

DATE: 29 SEP 05

Appendix B
ADMINISTRATIVE ORDER ON CONSENT (AOC)
STATEMENT OF WORK (SOW)
Surface Soil Characterization, Health Education and Risk Reduction
St. Joe Minerals Corp. - Viburnum Site
Removal Preliminary Assessment/Site Inspection

Objective

The objective of this Removal Site Inspection is to identify and characterize all lead-contaminated residential properties or child high use areas which may be contaminated as a result of mining activities from the St. Joe Minerals Corp. - Viburnum Site within the site boundaries shown generally on exhibit A of this SOW. The potential sources requiring investigation include, but are not limited to, fugitive lead dust from hauling lead ore or lead concentrate via rail or roadway; fugitive lead dust from mining and/or milling activities; the use of mine waste as construction material for fill or aggregate; washing of trucks containing lead ore and/or concentrate; or any other activity which caused lead from mining and mining related activities to be deposited in the soil of a residential yard within the site boundaries shown in exhibit A.

Task 1 - Removal Preliminary Assessment/Site Inspection

All sampling activities will be conducted consistent with EPA's: Superfund Lead-Contaminated Residential Sites Handbook, OSWER 9285.7-50, August 2003. The Respondent, using professional judgment, shall design and conduct sampling activities with the intent of locating the true mean contamination of a sampled area. While collecting aliquots, the Respondent shall not attempt to avoid obvious or probable areas of higher lead concentrations such as visible mine waste, drainageways, and drainage collection areas.

For any residence or child high use area within the boundaries shown on Exhibit A, Respondent shall characterize surface soils to determine the total lead concentration present. Sampling priority will be given to residences where Respondent is notified that a child has an Elevated Blood Lead (EBL) level and where a child under 72 months of age resides. The sampling will be conducted in accordance with an EPA-approved sampling plan and Quality Assurance Project Plan (QAPP). Unless Respondent has information suggesting contamination at depth, multi-aliquot soil samples will be collected from the upper one inch of soil in each quadrant of a residential property. Separate multi-aliquot soil samples will be collected from drip zones, down spout outfalls, large bare spots, driveways, child play areas, and vegetable gardens.

Analysis may be performed using an X-Ray Fluorescence instrument with 10% of the samples being submitted to a laboratory for analysis. The Respondent shall prove, in advance of conducting field activities, to EPA's satisfaction, that each laboratory it uses is qualified to

conduct the proposed work. The laboratory shall have and follow a recognized quality assurance program.

Data shall be provided to EPA in both paper copy and in a Geographical Information System (GIS) format. All visits to homes will be documented and entered into the GIS including those sampled, no one at home, and refusals to allow sampling (including reason given, if any.)

Task 2 - Health Education and Risk Reduction

Respondent will provide a personalized package of EPA-approved educational material and sampling results to the homeowner and current resident in a "Sampling Results Letter" within seven (7) days of Respondent's receipt of final validated sampling results, but no later than thirty (30) days from the date Respondent collected the samples. Parents or guardians of young children shall be encouraged to have their child scheduled for blood lead testing. Respondent shall send EPA a copy of this letter and the sample results without the educational materials enclosed.

In an effort to reduce the risk of lead exposure, Respondent shall provide a new vacuum cleaner equipped with a High Efficiency Particulate Arresting (HEPA) filter to all homeowners whose yard soils exceed 1,200 parts per million in any quadrant sampled. The vacuum cleaners must be delivered to the residents within thirty (30) days of Respondent receiving final validated sample results from the laboratory.

Deliverables

1. **Work Plan** - The Respondent shall prepare a Work Plan that describes the soil characterization activities. The Work Plan shall include a Field Sampling Plan, a Quality Assurance Project Plan (QAPP), and Health and Safety Plan in accordance with the Order. The Work Plan shall also include an aggressive schedule which details the work required and the time it will take to complete this Removal PA/SI.
2. **Sampling Results Letter** - This document will be a copy of the letter provided to the property owner and/or current resident, but shall not include copies of the enclosed health education materials. This letter is due to EPA within seven (7) days of Respondent's receipt of the sample results, but no later than thirty (30) days from the date Respondent collected the sample.
3. **Monthly Status Reports** - Beginning thirty (30) days from the effective date of the order, respondent shall prepare a monthly status report in accordance with the requirements of the Order. The purpose of this report is to document progress, report upcoming events, and to inform EPA of problems or important issues. At a minimum, Respondent should report monthly sampling progress by presenting data in the following categories:

Total Number of Yards Sampled and Analyzed

Number of Yards with Lead Contamination greater than or equal to 1200 ppm

Number of Yards with Lead Contamination between 400 ppm and 1200 ppm

Number of Yards with Lead Contamination in the Drip Zone Only

Number of Yards with Lead Contamination less than 400 ppm

4. **Property Access List** – Within seven (7) days of Respondent's "Best Efforts" (as defined in the AOC) to obtain access to a residential property or child high use area, Respondent shall notify and provide to EPA all appropriate information regarding the property where Respondent was unable to obtain access. This notification shall include only those residents where the Respondent has made attempts to obtain access in accordance with the requirements of the Order but despite these efforts was still unable to obtain access.
5. **Notice of Completion of Field Activity** - Within seven (7) days of completion of field activities Respondent shall report to EPA, in writing, that all sampling and other field activities have been completed.
6. **Removal Preliminary Assessment/Site Inspection Report (PA/SI Report)** – The Respondent shall prepare a PA/SI Report in accordance with the requirements of the Order.

DELIVERABLE	SCHEDULE
Work Plan Field Sampling Plan Quality Assurance Sampling Plan (QASP) Health and Safety Plan (HASP)	within thirty (30) days of the effective date of the AOC
Notice of Sampling Activities	at least seven (7) days prior to beginning sampling activities
Sampling Results Letter Data in GIS Format	within seven (7) days of Respondent's receipt of sample data and no more than thirty (30) days from the date Respondent collects the soil samples
Monthly Status Reports	beginning thirty (30) days after the effective date of this AOC and every thirty (30) days thereafter, until the project is completed
Property Access List	within seven (7) days from the date that access was not obtained through best efforts by Respondent

Notice of Completion of Field Activity	within seven (7) days from the date of the completion of field activities and within the schedule approved in the Work Plan
Removal Preliminary Assessment/Site Inspection Report	within (90) days from the date of the completion of field activities